



September 18, 2001

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2001-4174

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152108.

The Haltom City Police Department (the "department") received a request for all records in the possession of the department relating to the investigation of a named jailer, as well as all personnel records, book-in records, and bond records pertaining to this individual. You state that certain information is being released, but claim that the majority of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We note at the outset that a portion of the information you submitted to this office constitutes information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. *See* Gov't Code §§ 552.022(a)(2) (names, sex, ethnicity, salary, title, and dates of employment of each employee of a governmental body). The information subject to section 552.022(a)(2) listed above which appears in the submitted personnel

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<sup>1</sup>We note that the submitted information contains a document entitled "Haltom City Police Department Special Weapons and Tactics Standard Operating Procedures." Because we are unable to determine how this document is responsive to the request, this ruling does not address the applicability of your raised exceptions to that document.

materials must therefore be released pursuant to section 552.022 unless this information is expressly made confidential under other law.

Sections 552.103 and 552.108 of the Government Code are discretionary exceptions that do not constitute "other law" that makes information confidential for purposes of section 552.022(a)(2). See Open Records Decision Nos. 542 (1990) ("litigation exception" does not implicate third party rights and therefore is waivable by a governmental body), 177 (1977) ("law-enforcement exception" waivable by governmental body). We therefore conclude that the information subject to section 552.022(a)(2) which appears in the submitted personnel materials must be released pursuant to section 552.022 of the Government Code.

We next address your argument under section 552.108 for the remainder of the submitted information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the requested information relates to an ongoing criminal investigation that has been referred to the Tarrant County District Attorney's office. Based upon this representation, we conclude that the release of most of the submitted information would interfere with the detection, investigation, or prosecution of crime and it is therefore excepted from disclosure under section 552.108(a)(1). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. However, because the submitted documents contain information about an alleged sexual assault, certain front page offense report information may be excepted from disclosure under section 552.101 of the Government Code. In sexual assault cases, section 552.101 excepts from public disclosure certain information that is not normally excepted under section 552.108. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information must be withheld on the basis of common law privacy. The doctrine of common law privacy protects information if it is

highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. However, here it appears that the requestor is an attorney who represents the victim. Thus, the victim-identifying information must be released to the requestor pursuant to section 552.023(a). Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest.<sup>2</sup>

In addition, the submitted information contains a search warrant and accompanying affidavit. The department must release the search warrant affidavit if it has been executed. Code Crim. Proc. art. 18.01(b) (search warrant affidavit is public if executed). The department must also release the search warrant itself as it appears to have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

To summarize, the submitted information may be withheld under section 552.108(a)(1), with the exception of basic information, the submitted search warrant and the accompanying affidavit, and information subject to section 552.022(a)(2), which must be released to the requestor. As we resolve your request under section 552.108, we need not address your other raised exceptions except to generally note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

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<sup>2</sup>Because the information to be released under section 552.023 is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or her authorized representative, the department should again seek our decision.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref.: ID# 152108

Enc.: Submitted documents

c: Mr. Christopher Lee Miller  
Attorney And Counselor  
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Dallas, Texas 75219  
(w/o enclosures)